NOTES OF CASES.

Pleading—Declaration—Separate Causes in One Count—Virginia Case Distinguished.—In Southern Ry. Co. *v.* Cook, 226 Fed. 1. a case arising from the Western District of Virginia, at Danville, it was held that, in an action against a railroad company for the death of a section foreman, killed by a train, a count in the declaration alleging negligence of defendant in failing to keep a lookout, in failing to give warning signals, and in running at a dangerous rate of speed not demurrable, as stating separate and distinct causes of action, since, while neither failure to give signals nor high speed will alone ordinarily constitute actionable negligence in respect to a track workman, either may be negligent under certain conditions, and both would aggravate the negligence of running without a lookout.

To support the demurrer, the defendant relied on a rule of pleading thus laid down by the Supreme Court of Appeals of Virginia in N. & W. Ry. Co. *v.* Stegall, 105 Va. 538, 54 S. E. 19.

"It is clear, therefore, from the authorities, that the defendant was not guilty of actionable negligence in pushing the train in question over its trestle, and was under no obligation to keep a lookout on the end of its cars, or, in anticipation of decedent's presence on the trestle, to provide for his safety. It was the duty of the defendant, it is true, to observe the speed ordinance of the city of Bristol; but the alleged violation of that ordinance is commingled with the averments that the defendant was derelict in its duty to the decedent in pushing, instead of pulling, its train across the trestle, and in not stationing a lookout on the end of the cars, to the combined effect of all of which the injury complained of is ascribed as the proximate cause. We are of opinion that a count in a declaration thus blending allegations of duty, only one of which imposes any obligation upon the defendant, and attributes the accident to the cumulative effect of all as the proximate cause, does not conform to the reasonable rule of pleading applicable to this class of cases, which requires that the duty alleged to be owing from the defendant and the acts of negligence relied on shall be stated with sufficient particularity and clearness to enable the defendant to understand the nature of the charge that he is called upon to answer." Woods, Circuit Judge, in distinguishing N. & W. Ry. *v.* Stegall, supra uses the following language:

"We think this conclusion not inconsistent with the rule of N. & W. Ry. *v.* Stegall, supra. In that case the court held that the railroad owed only the duty of observing the speed ordinance of the city of Bristol, and that it was in such relation to the deceased that it would have owed no duty to him with respect to speed, but for the ordinance. Since the one act of negligence was founded on the ordinance, the plaintiff was limited to that, and could not claim that other acts entirely lawful could be added to the statutory offense as

aggravation of it. In other words, there it was the ordinance, and not the surrounding circumstances, which made the rate of speed negligence, and therefore the other allegation of failing to keep a lookout and pushing the cars across the trestle could not be treated other than as separate innocent acts alleged and relied on as negligence in themselves."

A second count in the same Federal case supra, alleging negligence in failing to promulgate and enforce reasonable rules for the protection of decedent, and in running the train at a dangerous speed around a curve in a cut, without giving any signal or keeping a lookout, was held not demurrable, in that it did not specify what the rules should be; its meaning being evident from the other allegations.

To quote from the opinion: "The second count is more definite, and still less subject to demurrer. It alleges negligence (1) in failing to promulgate and enforce reasonable rules for the protection of Poteat, a section foreman; (2) in running the train at an unreasonable speed around a curve in a deep cut without ringing its bell or blowing its whistle, and without keeping any lookout for the protection of the decedent. It is not definitely alleged what the rules should have been, but it is sufficiently evident that the pleader meant to say that the defendant had failed to make reasonable rules as to giving signals, keeping a lookout, and regulating speed around a curve in a deep cut. It is not necessary to allege what the rules should have been. The failure to provide any reasonable rules as alleged for the conduct of the train and the hand car would be itself an act of negligence. Writer's Adm'r *v.* Southern Ry. Co., 101 Va. 36, 42 S. E. 913."

Constitutional Law—Equal Protection of the Laws—Discrimination Against Aliens—Classification.—The discrimination against aliens lawfully resident in the state, which is produced by the provisions of Ariz. act of December 14, 1914, that every employer of more than five workers at any one time, "regardless of kind or class of work or sex of workers shall employ not less than 80 per cent qualified electors or native-born citizens of the United States or some subdivision thereof," renders the statute invalid under U. S. Const., 14th Amend., as denying the equal protection of the laws, and such statute cannot be justified as an exercise of the power of the state to make reasonable classifications in legislating to promote the health, safety, morals, and welfare of those within its jurisdiction. Truax *v.* Raich, 36 Sup. Ct. Rep. 7.

It is interesting to note that the case of McCready *v.* Virginia, 94 U. S. 391, 396, 24 L. Ed. 248, 249, is distinguished—"The discrimination defined by the act does not pertain to the regulation or distribution of the public domain, or of the common property or resources of the